

Remarks

This Response is being filed responsive to the Office Action dated July 29, 2008. For the following reasons, this application should be considered in condition for allowance and the case passed to issue.

Claim Rejections – 35 U.S.C. 101

Claims 17 and 20-24 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. It was stated that claims 17 and 20-24 failed to meet the statutory requirements of 35 U.S.C. §101 because they were not tied to another statutory class of invention. This rejection is hereby traversed and reconsideration and withdrawal thereof are respectfully requested.

Claim 17 provides for a method of centralized monitoring of medication administration for a plurality of patients. It includes storing a database of medication administration guidelines. These medication administration guidelines are communicated, along with medication administration information, to a central location. This storing of medication administration guidelines within a database, and a communication of the medication administration information and medication administration guidelines to a central for method steps that make the method a statutory process. The centralization of monitoring of the medication administration is an important component of the invention and was discussed in the present specification. They are not related to the mere use of a machine to collect data necessary for application of a medical process. Further, claim 17 requires provision of an indication at the central location if one of the parameters values does not fall within the acceptable values for that parameter in the corresponding medication administration guideline. This centralization of the monitoring, as well provision of an indication of a parameter value falling outside the acceptable values for that

parameter, are not mere mental calculations, but rather are method steps that are tied to another statutory class of invention, such as networked medication administration devices. Accordingly, claims 17 and 20-24 are directed to statutory subject matter. The rejection of claims 17 and 20-24 under 35 U.S.C. §101 should therefore be reconsidered and withdrawn and such action is courteously solicited.

Claim Rejections – 35 U.S.C. §103

Claims 1-7, 9-21 and 23-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schlotterbeck (hereinafter “Schlotterbeck”) in view of Allen, III (hereinafter “Allen”). Claims 8 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schlotterbeck in view of Allen and further in view of Kaufman et al. (hereinafter “Kaufman”). These rejections are hereby traversed and reconsideration and withdrawal thereof are respectfully requested.

Although Applicants disagree that the claimed invention is obvious predicated upon any combination of the cited references, in order to expedite prosecution of the application, Applicants submit that the reference to Schlotterbeck cannot be properly applied against the present application under 35 U.S.C. §103. As discussed in MPEP §2146, a reference that qualifies as “prior art” merely under 35 U.S.C. §102(e) cannot be considered when determining whether an invention sought to be patented is obvious under 35 U.S.C. §103, provided the subject matter of the claimed invention was commonly owned at the time the invention was made. Since the Schlotterbeck reference was published on July 1, 2004, only after the December 31, 2003 filing date of the present application, the Schlotterbeck reference qualifies as prior art only under 35 U.S.C. §102(e).

STATEMENT CONCERNING COMMON OWNERSHIP

U.S. Patent Application Serial No. 10/750,032 (the instant application) and U.S. Patent Application Publication No. 2004/0128162 were, at the time invention of Application No. 10/750,032 was made, owned by Cardinal Health 303, Inc. by Assignment dated March 22, 2005, as recorded at Reel 016385/Frame 0635. It is noted that Cardinal Health 303, Inc. is successor and interest to Alaris Medical Systems, Inc. and Alaris Medical Inc.

U.S. Patent Application Serial No. 10/331,034 was assigned originally to Alaris Medical Systems, Inc. at Reel 014184/Frame 0828 and by an additional Assignment at Reel 014229/Frame 0718. Alaris Medical Systems, Inc. assigned the application to Alaris Medical Inc. due to a merger, this document being recorded at Reel 014603/Frame 0428 on October 16, 2003. The change of name was made to Cardinal Health 303, Inc. as noted in the Assignment document recorded at Reel 017049/Frame 0962, recorded on January 23, 2006.

Note that the inventor Timothy Vanderveen is a common inventor to both applications.

Since the subject matter disclosed by U.S. Patent Application No. 10/331,034 and 10/750,032 were commonly owned at the time was made or subject to an obligation of Assignment to the same person, i.e. Alaris Medical Systems, Inc., later Cardinal Health 303, Inc., the rejection under 35 U.S.C. §103 must be reconsidered and withdrawn.

In light of the above statement regarding common ownership, the application should be considered in condition for allowance and the case now passed to issue. If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

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including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

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